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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

KNOLTS HUTCHINSON,

Defendant and Appellant.

B210473

(Los Angeles County
Super. Ct. No. LA031657)

THE COURT:*

In 1999, Knolts Hutchinson was convicted by jury of simple assault (Pen. Code, § 240, count 3)¹ as a lesser included offense of assault with a deadly weapon, and assault with a deadly weapon (§ 245, subd. (a)(1), count 4).² The trial court found to be true the allegation that appellant had suffered two prior felony strikes within the meaning of sections 1170.12, subdivisions (a) through (d) and 667, subdivisions (b) through (i). In

* BOREN, P. J., ASHMANN-GERST, J., CHAVEZ, J.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² Appellant was acquitted of attempted robbery and one count of assault with a deadly weapon in counts 1 and 2, respectively.

January 2000, it denied appellant's *Romero*³ motion which sought to dismiss a strike in furtherance of justice pursuant to section 1385. The trial court sentenced appellant to state prison for 25 years to life on count 4, staying pursuant to section 654 imposition of sentence on count 3 and the prior prison term enhancements within the meaning of section 667.5, subdivision (b).

Appellant unsuccessfully appealed the judgment on the ground, among others, that his sentence constituted cruel and unusual punishment. After his appeal, he filed two unsuccessful petitions for writ of habeas corpus.

On June 25, 2008, appellant filed another *Romero* motion again asking the trial court to strike one of his prior strikes. The motion was made on the ground that his two prior felony strikes were the result of "one single prior act with one single intent and objective of selling both cocaine and heroin on the very same single occasion and under the very same set of operative facts." The trial court denied the motion, stating that the motion "was heard and denied during the sentencing hearing. At best, defendant's instant motion to strike a strike can be characterized as an improper appeal to the trial court of the original sentencing court's denial of defendant's *Romero* motion. The issue could have been raised on appeal." Appellant appeals from the post-judgment order denying his motion to strike one of his prior felony strikes.

Appellant's assault with a deadly weapon conviction arose from the following facts: Appellant, wheelchair bound, was involved in an altercation with one or more persons, wherein appellant was the aggressor with a one and one-half inch paring knife. The victim was uninjured in the incident.

We appointed counsel to represent appellant on appeal. After examination of the record, counsel filed an "Opening Brief" in which no issues were raised. On April 14, 2009, we advised appellant that he had 30 days within which to personally submit any

³ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

contentions or issues which he wished us to consider. On July 17, 2009, appellant filed an “informal brief” contending that (1) both of his prior felony strikes for violation of Health and Safety Code section 11353 were suffered in a single case, for events occurring on one single occasion, under the same operative facts and thus he was not a true recidivist to whom the three strikes law applies, and (2) that he suffered ineffective assistance of counsel by virtue of trial counsel’s failure to present to the trial court that both prior convictions arose out of the same occasion and a single transaction.

Appellant’s 2008 *Romero* motion was tantamount to an effort to modify his judgment and sentence entered nearly 10 years earlier. Generally, a trial court is without jurisdiction to resentence a defendant. (*Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 543 [“Ordinarily, once a criminal judgment and sentence are final, the trial court loses jurisdiction to correct error”]; *People v. Kirkpatrick* (1991) 1 Cal.App.4th 538, 542-543, quoting from *People v. McAllister* (1940) 15 Cal.2d 519, 526-527.) Section 1170, subdivision (d) authorizes the trial court to recall a sentence and resentence a defendant under limited circumstances, which are not present here. Hence, the trial court lacked jurisdiction to reconsider the judgment and sentence entered nearly 10 years earlier.

To the extent that appellant contends that he suffered ineffective assistance of counsel, that claim must generally be raised by petition for writ of habeas corpus based on matters outside of the appellate record. (*People v. Salcido* (2008) 44 Cal.4th 93, 172.)

We have examined the entire record and are satisfied that appellant’s attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The order under review is affirmed.

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